

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

No. 16,080

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT *United States Court of Appeals
For the
District of Columbia Circuit*

FILED

MAR 17 1961

CORNELL JOEL GROSSMAN, D.D.S., PETITIONER,

v.

Joseph H. Stewart

CLERK

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**UNITED STATES ATOMIC ENERGY COMMISSION AND
UNITED STATES OF AMERICA, RESPONDENTS**

ON PETITIONER'S MOTION FOR REVIEW

BRIEF AND APPENDIX FOR RESPONDENTS

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IN THE OPINION OF RESPONDENTS, THE FOLLOWING QUESTIONS ARE
PRESENTED

1. Whether the judgment of this Court in *Cornell Joel Grossman, D.D.S. v. United States, et al.*, 101 U.S. App. D.C. 22, 246 F. 2d 709, is a bar to this action.

2. Whether petitioner is entitled to an award under the Atomic Energy Act of 1954, when the concepts here involved are not useful in the production or utilization of special nuclear material or atomic energy.

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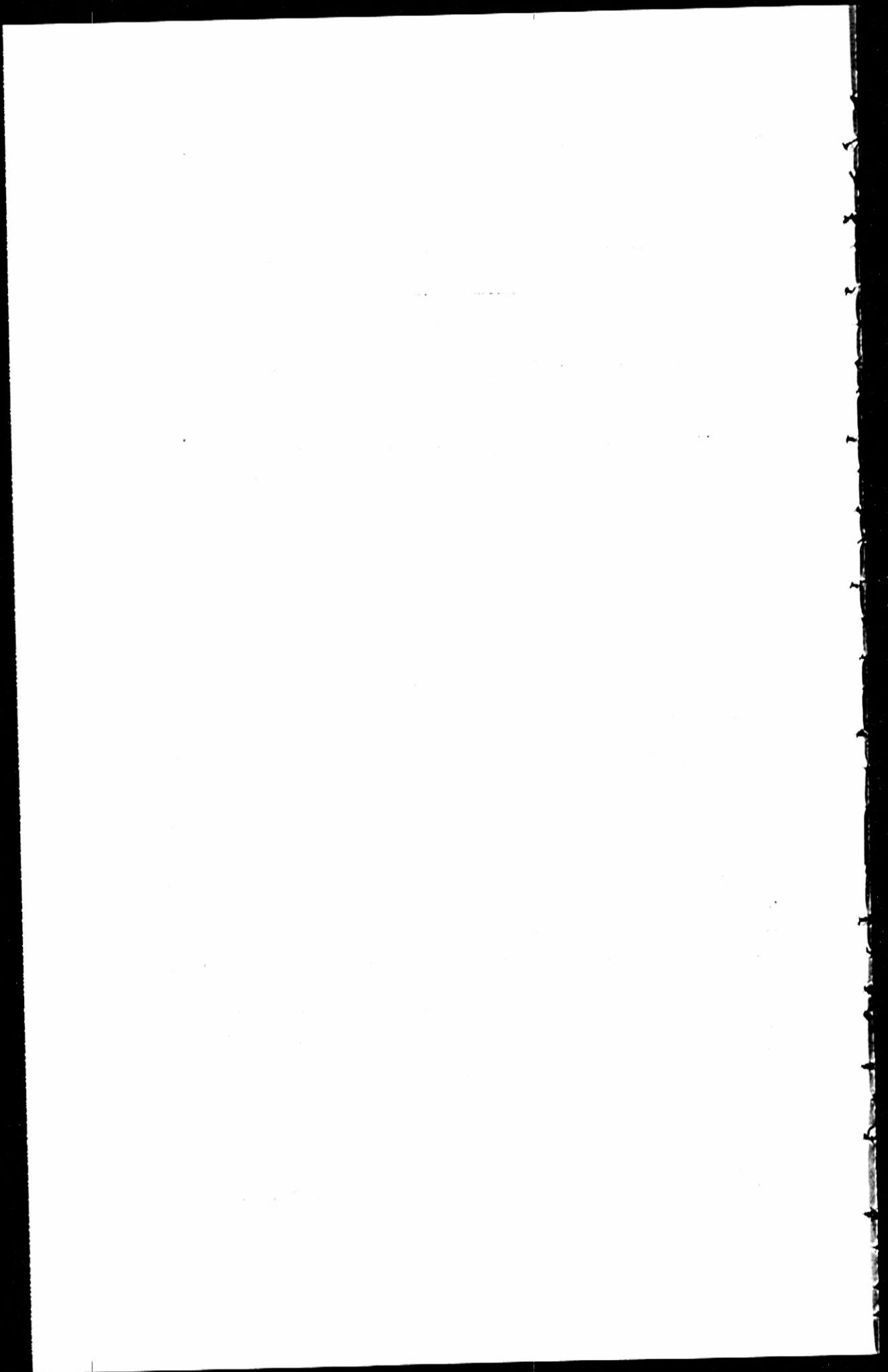
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IN THE
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FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 16,080

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UNITED STATES OF AMERICA, RESPONDENTS

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COUNTERSTATEMENT OF THE CASE

This case involves a claim filed on February 27, 1958, by petitioner with the Atomic Energy Commission for an award¹ under Section 157 of the Atomic Energy Act of 1954, 68 Stat. 947, 42 U.S.C. 2187.

1. *Proceedings on prior claim by petitioner for an award.* Prior to the filing of his present claim, petitioner applied to the Atomic Energy Commission on April 20, 1954, for an award or compensation based upon alleged disclosures to various officers of the United States of concepts which may be characterized generally as within the field of chemis-

¹ Petitioner's application requested an "award or just compensation" and proposed a reasonable "royalty" fee. The Commission treated the application as one for an award under Section 157 of the Act, 42 U.S.C. 2187, since there had been no taking of a patent by the Commission for which compensation would be due (42 U.S.C. 2181), nor any licensing of a patent owned by petitioner for which a royalty fee might be due (42 U.S.C. 2183).

try, and which were referred to by petitioner as his "nitro hydrogen bomb." That application was before the Commission's Patent Compensation Board as its Docket No. 17.² In Exhibit A, dated February 8, 1954, in such Docket, the disclosure was described by petitioner as:

The TriNitroTriHydrogen Atomic Bomb—Made from Ammonium Nitrate, Arsenic and Hydro Cyanic Acid . . . Catalyst—Platinum and Palladium.

And in a paper dated April 6, 1954, which was also a part of the application in such earlier Docket, the "bomb" was described as:

THE NITRO-HYDROGEN BOMB—(Tri Nitro Tri Hydrogen) Made from Ammonium Nitrate, Arsenic, and Hydrocyanic Acid. Catalyst—Platinum, Palladium, and other or other catalysts.

After a hearing at which petitioner testified and presented exhibits, the Board on October 25, 1955, issued its determination as follows:

Applicant is not entitled to any award under the Atomic Energy Act of 1946 or the Atomic Energy Act of 1954, because, as appears from the disclosures themselves and from the testimony of Colonel Dorsey, the disclosures made in the application and upon the hearing do not reveal teachings that have been or are useful to the utilization of atomic energy either for military weapons or for other purposes. (D. 17, Item 13).³

² That docket was the subject of review by this Court in *Cornell Joel Grossman, D.D.S. v. United States, et al.*, 101 U.S. App. D.C. 22, 246 F. 2d 709. The present petition for review is of the Commission's Docket No. 28. In a prehearing order of this Court filed on February 7, 1961, leave was granted each party to this action to refer to the original records in both cases in lieu of printing a joint appendix. Respondent has, however, for the convenience of the Court, printed in an appendix to this brief the decision of the Patent Compensation Board in the present case.

³ This reference is to an item listed in the index to the transcript of the Commission's Docket No. 17 as filed in this Court. Similar

On November 1, 1955, petitioner filed a petition for review in this Court which case was given Docket No. 12,959. Thereafter on petitioner's motion, the Court by order dated February 10, 1956, remanded the case to the Atomic Energy Commission in order that petitioner might seek the administrative relief to which he believed he was entitled. Pursuant to such order a hearing was held by the Patent Compensation Board of the Atomic Energy Commission, at which petitioner was again afforded the opportunity to present his claim in full. Petitioner testified and was given an opportunity to cross-examine the witness appearing on behalf of the Commission. On November 26, 1956, the Board issued its decision in which it stated:

Any disclosure that applicant has testified to before this Board is essentially chemical in character and at most, a speculative and conjectural conception of a weapon which is not atomic in character but one dependent upon chemical reactions for detonation and destructive effects. * * * The evidence * * * does not justify any modification of our previous determination. (D. 17, Supp. Tr.) *he*

Thereafter, petitioner filed his Motion to Reopen which was granted by this Court on January 9, 1957, and the Court proceeded to a review of the Commission's action. In a *per curiam* opinion rendered on June 13, 1957, this Court upheld the Commission's determination that petitioner was not entitled to an award. *Cornell Joel Grossman, D.D.S. v. United States, et al.*, 101 U.S. App. D.C. 22, 246 F. 2d 709.⁴

2. *The present claim.* Petitioner's present claim is based upon an alleged invention of an "atomic explosive" described in Patent Application No. 632,001 filed by petitioner with the Patent Office on January 2, 1957, in which such invention was entitled "New chemical combination, or

reference will be made to items in the transcript of the Commission's Docket No. 28 in the present case.

⁴ Petitioner's appeal was dismissed and leave to file a petition for certiorari was denied by the Supreme Court. *Grossman v. United States, et al.*, 355 U.S. 285, rehearing denied, 355 U.S. 942.

composition useful as a military weapon, bomb, explosive for peaceful or military use, poison gas, fuel, propellant, or source of atomic power." Petitioner stated that work had begun on this invention in October 1918. (D. 28, Items 1 and 2). The patent application was rejected, and, thereafter, was abandoned by petitioner (App. 20).

In petitioner's present application for an award, his alleged invention is characterized as follows:

My invention contains Ammonium Nitrate in explosive combination with Hydro Cyanic Acid.

To which may be added as part of this invention, Arsenic,—Metallic Arsenic, Elemental Arsenic, or as an Oxide or Arsenical.

To which may be added as part of this invention Platinum or, and, Palladium Black, to act as a catalyst.

Substitution can be made in this invention for the Platinum, or, and Palladium, by using other catalysts, such as Platinum Rhodium, or any Platinum Metals Catalyst, or the Platinum Group Metals Catalyst, or other Catalyst, without departure from the scope of my invention.

To which may be added as part of my invention Barium Peroxide, as an added poison, and Primer, and Oxidizer.

Other Barium Compounds can be substituted in this invention, such as the Nitrate, or the Barium can be the activator primer of a Thermit Addition to this invention. (D. 28, Item 2, p. 3).

The Office of the General Counsel of the Atomic Energy Commission filed with the Commission's Patent Compensation Board a motion to dismiss petitioner's application for an award on the grounds, among others, that the determination in Docket No. 17 was *res judicata*, and that the current application disclosed that it did not fall within the terms of the Atomic Energy Act, in that it did not relate to nuclear phenomena.

A hearing on petitioner's claim was held by the Patent Compensation Board on October 15, 1958, at which peti-

tioner was present and testified, and also cross-examined Commander Watters, the Commission's witness (D. 28, Item 8). During the course of the hearing, when petitioner was questioned concerning the relation of the subject matter of his present claim to that of prior claims made by him to the Commission, he stated that there was "no real difference", and there was "no new invention involved" (App. 21).

On September 30, 1960, the Patent Compensation Board rendered its decision in which it held that petitioner was not entitled to an award under the Atomic Energy Act of 1954, for the reasons that (1) "all that is covered by this application was disposed of in the consideration of Docket No. 17"; and (2) "the substance of the disclosure does not relate to the statutory subject matter committed to this Board, that is, 'invention or discovery useful in the production or utilization of special nuclear material or atomic energy, * * *' (Sec. 157b(3))." (App. 25-26). A petition for review was denied by the Atomic Energy Commission on November 2, 1960.⁵

On November 22, 1960, a petition for review was filed in this Court in which petitioner prays that the Court "refer Docket # 28 back to the United States Atomic Energy Commission for test, recognition and compensation of the appellant, the inventor."

Under the judicial review provisions of Section 189 of the Atomic Energy Act of 1954, 42 U.S.C. 2239, and Sections 2, 3, 7 and 9 of the Act of December 29, 1950, 64 Stat. 1129 as amended, 5 U.S.C. 1032, 1033, 1037 and 1039, this Court has jurisdiction to review final Commission orders on applications for awards. In accordance with the provisions of Section 6 of the Act of December 29, 1950, as amended, 5 U.S.C. 1036, the Commission filed with the Court on December 30, 1960, the transcript of the record in the Commission's Docket No. 28; and pursuant to Sec-

⁵ Under the regulations of the Atomic Energy Commission, denial by the Commission of a petition for review makes the determination of the Patent Compensation Board the final Commission action. 10 C.F.R. 80.61(e).

tion 7(a) of said Act, 5 U.S.C. 1037(a), the petition is to be heard "upon the record of the pleadings, evidence adduced, and proceedings before the agency".⁶

STATUTES INVOLVED

Section 157 of the Atomic Energy Act of 1954, 68 Stat. 947, 42 U.S.C. 2187, provides in part:

(a) The Commission shall designate a Patent Compensation Board to consider applications under this section. * * *

Eligibility

(b) * * *

(3) Any person making any invention or discovery useful in the production or utilization of special nuclear material or atomic energy, who is not entitled to compensation or a royalty therefor under this chapter and who has complied with the provisions of section 2181(c) of this title may make application to the Commission for, and the Commission may grant, an award. * * *

Standards

(c) (1) In determining a reasonable royalty fee as provided for in section 2183(b) or 2183(e) of this title, the Commission shall take into consideration (A) the advice of the Patent Compensation Board; (B) any defense, general or special, that might be pleaded by a defendant in an action for infringement; (C) the extent to which, if any, such patent was developed through federally financed research; and (D) the degree of utility, novelty, and importance of the invention or discovery, and may consider the cost to the owner of the patent of developing such invention or discovery or acquiring such patent.

⁶ Petitioner has requested that this Court remand the case for the Commission to detonate his "bomb". As the Commission has found and respondents maintain, petitioner's invention does not relate to nuclear phenomena. Remand for detonation would serve no useful purpose, and would be improper.

(2) In determining what constitutes just compensation as provided for in section 2181 of this title, or in determining the amount of any award under subsection (b) (3) of this section, the Commission shall take into account the considerations set forth in paragraph (1) of this subsection and the actual use of such invention or discovery. * * *

SUMMARY OF ARGUMENT

1. The present case is in all material aspects the same as that heretofore prosecuted by petitioner in this Court which resulted in a judgment adverse to him in *Cornell Joel Grossman, D.D.S. v. United States, et al., supra*. The claim in each case is for an award from the Atomic Energy Commission based upon the same alleged invention or discovery and disclosures thereof. In these circumstances, the doctrine of *res judicata* is a bar to the maintenance of this litigation. Should this Court consider that the existence of two separate Commission dockets is a technical obstacle to the application of such doctrine, on the theory that these are two separate causes of action, recovery by petitioner is nevertheless precluded by the rule of collateral estoppel or estoppel by judgment.

2. The record shows that petitioner is not entitled to an award under the Atomic Energy Act for the reason that the subject matter of his claim concerns chemical reactions and does not relate to an invention or discovery useful in the production or utilization of special nuclear material or atomic energy, as those terms are defined in the Act.

ARGUMENT

I. Petitioner's Claim Is Barred by the Prior Judgment of This Court

There is no question that a judgment on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties on the same claim. *United States v. Munsingwear, Inc.*, 340 U.S. 36; *Jones v. United States*, 97 U.S. App. D.C. 81, 228 F. 2d 52; 30A Am. Jur. 371, § 324, and 403, § 363. See also *United*

States v. International Building Co., 345 U.S. 502, 504, certiorari denied, 345 U.S. 978.

What may be called a "classic statement" of the rule of *res judicata* is found in the following language of the Supreme Court of the United States in *Southern Pacific R. Co. v. United States*, 168 U.S. 1, 48-49:

The general principle announced in numerous cases is that a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies; and even if the second suit is for a different cause of action, the right, question or fact once so determined must, as between the same parties or their privies, be taken as conclusively established, so long as the judgment in the first suit remains unmodified. This general rule is demanded by the very object for which civil courts have been established, which is to secure the peace and repose of society by the settlement of matters capable of judicial determination. Its enforcement is essential to the maintenance of social order; for, the aid of judicial tribunals would not be invoked for the vindication of rights of person and property, if, as between parties and their privies, conclusiveness did not attend the judgments of such tribunals in respect of all matters properly put in issue and actually determined by them.

And the doctrine applies to judgments rendered by courts upon review of administrative determinations. *State Corporation Commission v. Wichita Gas Co., et al.*, 290 U.S. 561; *Grubb v. Public Utilities Commission of Ohio*, 281 U.S. 470; 30A Am. Jur. 372, § 325. The reason for the rule is founded upon considerations of public policy to put litigation at rest. *Heiser v. Woodruff*, 327 U.S. 726; *Southern Pacific R. Co. v. United States*, *supra*; 30A Am. Jur. 373, § 326.

Elements generally deemed essential to the application of the doctrine are identity of parties, subject matter and cause of action. *W., A. and G. Steam-Packet Co. v. Sickles*, 65 U.S. 333, 341-342; *Hyman v. Regenstien*, 222 F. 2d 545,

549 (C.A. 5). Examination of the record and the decision of this court in the prior case between these same parties, and comparison with the record in the present case shows that all such conditions are satisfied, and the petition for review should therefore be dismissed on the ground that the former judgment is *res judicata* of petitioner's rights.

There can be no doubt of the identity of the subject matter of petitioner's claims. In response to a question asked petitioner during the administrative hearing on October 15, 1958, concerning the relation, if any, of the subject matter of his current claim to the disclosures upon which his prior claims to the Commission were based, petitioner testified that there was "no real difference. * * * there is no new invention involved." (App. 21). Indeed identity of subject matter is apparent in petitioner's applications where the description of his "nitro hydrogen bomb" in Docket No. 17 is in all essential particulars the same as the description of the "atomic explosive" for which he claims an award in Docket No. 28. (See pp. 2 and 4, *supra*). Moreover, he asserts in his brief (p. 5) as the basis for his claim that he "is the inventor who first gave the atomic Hydrogen Bomb formulary to the United States Government"; while he prayed in the prior action that this Court remand his request for compensation, and recognition, to the United States Atomic Energy Commission "as the inventor who first gave the atomic hydrogen bomb formulas to the United States of America." (246 F. 2d 709). In addition, petitioner's statement of points upon which he here intends to rely as set forth in his brief (pp. 7-10) refer to the same disclosures upon which he relied in an effort to establish his prior claim.

There is, likewise, identity of causes of action. In each proceeding before the Commission, petitioner sought compensation, or an award, under the Atomic Energy Act of 1954 for the same invention or discovery.⁷ However, should

⁷ The fact that petitioner filed an application for a patent prior to the presentation of his current claim is not material. The patent was rejected, and petitioner testified before the Commission that he had abandoned the application (App. 19-20).

this Court be of the view that the present petition for review constitutes a different cause of action merely because it relates to a different Commission docket, thereby preventing the application of the doctrine of *res judicata*, nevertheless, the rule of collateral estoppel, or estoppel by judgment, defeats the petition. This latter rule precludes relitigation of issues actually litigated and determined in the prior suit regardless of whether it was based on the same cause of action. *United States v. Moser*, 266 U.S. 236; *St. Lo Constr. Co. v. Koenigsberger, et al.*, 84 App. D.C. 319, 174 F. 2d 25, certiorari denied, 338 U.S. 821; 30A Am. Jur. 411-413, § 371. See also *Lawlor v. National Service Screen*, 349 U.S. 322, 326; *United States v. International Building Co., supra*; *Cromwell v. County of Sac*, 94 U.S. 351, 352-353; *Spruill v. Serven*, 68 App. D.C. 60, 93 F. 2d 219, certiorari denied, 302 U.S. 764, rehearing denied, 303 U.S. 666; *Atwell v. Ricketts*, 59 App. D.C. 199, 37 F. 2d 995.

The issue in the present review proceeding, like that in the former, is whether petitioner's invention or discovery, which is the same in both cases, is concerned with special nuclear material or atomic energy so as to entitle him to an award under the Atomic Energy Act of 1954. The Commission earlier determined that the formula was not thus concerned, and this Court affirmed the Commission's decision that petitioner was not entitled to an award under the Act. To entertain the present petition would be to relitigate the basic issue heretofore decided adversely to petitioner, and upon which his right to recover here depends. The prior decision on that issue now concludes petitioner. *United States v. Moser, supra*. Since the foregoing facts demonstrate that in all essential particulars the present action is the same as petitioner's previous action, the petition should be dismissed. *Gullo v. Veterans Cooperative Housing Assn.*, 106 U.S. App. D.C. 70, 269 F. 2d 517. Any other result would, we submit, be disruptive of orderly judicial procedure and allow relitigation of issues already fully litigated and decided. It would make for continued uncertainty in litigation and preclude conservation of judicial energy. It would, in short, be wholly inconsistent

with the underlying purpose of the principle of *res judicata*, "law of the case", and collateral estoppel.

II. The Record Shows That Petitioner Is Not Entitled to an Award Under the Atomic Energy Act of 1954

Independently of its disposition of petitioner's application on the ground that all material aspects were disposed of in the consideration of Docket No. 17, the Commission denied the award on the merits after a full hearing. Such determination is thoroughly supported. Therefore, even if this Court were to entertain the petition, it is clear from the record that petitioner cannot recover. To qualify for an award, his invention or discovery must be "useful in the production or utilization of special nuclear material or atomic energy."⁸ 42 U.S.C. 2187(b)(3). There is ample evidence in the record to show, as the Commission found, that petitioner's invention does not comply with these requirements. In support of its motion to dismiss, the Office of General Counsel of the Commission filed with the Patent Compensation Board the affidavit of Harry J. Watters, Commander in the United States Navy, and Assistant Chief, Nuclear Systems Section, Research and Development Branch, Division of Military Application, United States Atomic Energy Commission, which affidavit stated in pertinent part:

7. I have carefully read the petition and the patent application No. 632,001 submitted by Dr. Cornell Joel Grossman of Millburn, New Jersey. Based on my knowledge of the U. S. and overseas atomic energy

⁸ As defined in Section 11 of the Atomic Energy Act of 1954, 42 U.S.C. 2014, the term "special nuclear material" means "(1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the Commission, pursuant to the provisions of section 2071 of this title, determines to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material." And the term "atomic energy" means "all forms of energy released in the course of nuclear fission or nuclear transformation."

research and programmatic work, and of the U. S. nuclear weapons program, it is my considered opinion that Dr. Grossman's application contains:

(a) No disclosure useful in the production of or utilization of special nuclear material or of atomic or nuclear energy.

(b) No disclosure of any nuclear reactions nor of any atomic reactions not comprehensively treated in numerous elementary chemistry textbooks. (App. 20).

Subsequently, during the course of the hearing before the Board, Commander Watters testified that the phenomena expressed in petitioner's disclosure were "a chemical sort of reaction", involving "purely extra nuclear functions of the atom," and were not of a nuclear character as the agency understands that terminology in the Atomic Energy Act (App. 24). The record entirely supports the Commission's statement that its denial of an award in this case was "based upon the failure of the subject matter of [petitioner's] disclosure either to disclose anything that relates to the subject matter upon which we can grant an award, and also to the entire lack of proof of any value in the disclosure whatsoever." (App. 26).

Petitioner has had full opportunity to present his claim to the Commission and has failed to meet the statutory requirements for an award. The findings of the agency are lawful and are supported by substantial evidence. Clearly, petitioner does not have a valid claim under the Atomic Energy Act.

CONCLUSION

In the light of the foregoing, the petition should be dismissed, or in the alternative, the action of the Commission denying an award should be affirmed.

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APPENDIX

U. S. ATOMIC ENERGY COMMISSION

PATENT COMPENSATION BOARD

DOCKET No. 28

In the Matter of APPLICATION OF CORNELL JOEL GROSSMAN

ORDER UPON FINAL ACTION BY THE BOARD

BY THE BOARD:

Since the publication on May 20, 1960 of the Proposed Findings of Fact, Determination, and Statement of Reasons, Applicant has, in pretended compliance with Regulation 80.51, filed a series of documents with the Board dated May 24, May 28, and May 30, 1960, and received within a day or two of those dates.

Close examination and study has been made of these documents, with some difficulty, and the entire record reviewed, to determine what, if any, exceptions have been expressed. The documents contain nothing of substance upon the original issue.

If any exceptions are expressed in the documents, although they cannot be identified because of the disorderly and incoherent content, each and all are overruled and the Proposed Findings of Fact, Determination, and Statement of Reasons entered herein in May, 1960, are ordered to be the Findings, Determination and Statement of Reasons of this Board.

FINAL DETERMINATION

Applicant is not entitled to any award under the Atomic Energy Act of 1954.

Applicant's attention is called to Regulation 80.61 if further review is sought.

/s/ CASPER W. OOMS,
Chairman.

/s/ JOHN V. L. HOGAN,
Member.

/s/ LAWRENCE C. KINGSLAND,
Member.

Germantown, Md.

Dated:

FINDINGS OF FACT, DETERMINATION AND STATEMENT OF
REASONS

By the Board:

Applicant, who was previously before this Board in Docket No. 17, has filed this application for award under Section 157(b)(3) of the Atomic Energy Act of 1954, asking \$225,000.00 for an alleged invention in an "atomic explosive". The Office of the General Counsel of the Atomic Energy Commission filed a motion to dismiss based upon several grounds, including the grounds that the determination in Docket No. 17 is *res adjudicata* in this case, the substance of the application discloses that it does not fall within the terms of the Atomic Energy Act as it does not relate to nuclear phenomena, the application is so vague and general that it is impossible to determine the basis for the application for an award, and finally, that the application fails in many formal respects to comply with the statute and regulations.

Applicant was heard before the entire Board and the Office of the General Counsel appeared and submitted for examination by Applicant its witness, Commander Harry J. Watters, a Commander in the United States Navy and Assistant Chief, Nuclear Systems Section of the Research

and Development Branch of the Division of Military Application of the United States Atomic Energy Commission, who had previously filed an affidavit on behalf of the Atomic Energy Commission.

FINDINGS OF FACT

1. On February 17, 1958, Applicant as sole owner of the disclosure upon which this application for award is based, filed the application with the Office of the Atomic Energy Commission in Washington.

2. The basis for Applicant's application is found in Paragraph 1 thereof in which he sets forth the following:

"As the sole inventor of the atomic explosive described in patent application Number 632,001 filed January 2, 1957, I, Cornell Joel Grossman, of 46 Old Short Hills Road, Millburn, New Jersey, am herein applying for an award or just compensation for the atomic explosive invention described in the above patent application. The basis for bringing this to the United States Atomic Energy Commission is, that the United States Patent Office, in paper 2, has declared the subject matter to be atomic energy matter and in the scope of the commission and not the patent office."

Applicant states that work was begun on the invention in October, 1918.

3. Attached to the application was Applicant's application for United States Letters Patent Serial No. 632,001, filed complete on January 2, 1957, but subsequently abandoned after the first action by the Patent Office. The application was entitled "New Chemical Combination, or Composition Useful as a Military Weapon, Bomb, Explosive for Peaceful or Military Use, Poison Gas, Fuel, Propellant, or Source of Atomic Power".

4. The substance of the rather elaborate application for a patent is set forth in part in the following passage from the application:

"No claim is made for Ammonium Nitrate alone as an explosive, but the claim of my inventions is that the New Explosive made from the Ammonium Nitrate in Combination with HydroCyanic Acid and Arsenic is a New Explosive Compound and reaction that has an Unprecedented Explosive Power, and that the Heat Generated is so Great that the ATOMIC ENERGY RELEASED is so great as to Ionize and Explode The Atmosphere with the new explosive.

"Thus it is interesting to here note that WILLIAM KONRAD ROENTGEN DISCOVERED X-RAYS BECAUSE A SCREEN OF PLATINUM BARIUM Cyanide Glowed, from the rays coming from a tube, and so in my Bomb the EXPLOSION IS INTENSIFIED, JUST AS X-RAYS are intens- [sic] by a Platinum Barium Cyanide Screen to becoming visible and have Vastly Greater Effects on Chemical Emulsions, so Roentgen seeing the key in the Book, discovered X-rays, and THIS SAME INTENSIFIER OF ATOMIC POISON* PLATINUM BARIUM CYANIDE IS FORMED IN MY BOMB, WHERE BARIUM IS ONE OF THE INGREDIENTS AND PLATINUM METALS THE CATALYST, IN DETONATION WITH HYDRO CYANIC ACID.

"Thus the Bomb Ingredients can be Generated in toto, for instance in a Thermit Typereaction Zirconium Uranium Compounds could be reduced by Magnesium, Zirconium, or Aluminum Metal, With A Barium Peroxide Thermit Like Igniter and Intensifier of the reaction or oxidation, or a Halogen of Zirconium Uranium could be reduced in the Bomb, with the other explosive poisons.

"No claim is made for the preparation method of obtaining the ingredients in the active state in the bomb as metallurgical process of preparing the ingredients, but the claim is made for the bomb ingredients regardless of how arrived at. In this explosion, or combustion, in this combination.

"As part of my inventions finely powdered Zirconium, Uranium, Magnesium, or Aluminum, and the

like or their Hydrides may be added to raise the temperature of ignition, for as in all chemical reactions each ten degrees rise in temperature doubles the speed of the reaction, and all of the powdered ingredients or solids—are in the finest state of division, and the liquids or gases can be most concentrated, or liquefied or solidified. No definite proportions are needed of these ingredients but the detonator will find it best to use the proportions as represented by the molecular weights in the reaction involved, which can be figured by any one knowing chemistry. Staying on the Alkaline side detonated the HydroCyanic Spontaneously, and other alkalies, such as Sodium, Potassium hydroxied or Metal or any Alkaline Metal or Alkaline Earth Metal will detonate the HydroCyanic Acid, as will their Hydroxides or Oxides. The Platinum Palladium Black or the like, interacts the Atomic Hydrogen with the Atomic Oxygen of this formula and the other atoms so Quickly as to be a quicker more spontaneous, more powerful explosive, rendering the Atomic Power Reaction Greater.

“The great power of the Hydro Cyanic Detonation is in the fact that it is really a loose Combination of ATOMIC HYDROGEN, With Atomic Carbon, and Atomic Nitrogen, and it's BIVALENCE* THAT IS COVALENCE ENHANCES THIS ATOM BOMB HYDROGEN REACTION, AND THE AMMONIUM NITRATE ACTS AS THE INSTANT POWER POISON INTENSIFIER. The Hydrogen in the Reaction is so called Tritium, Deuterim, and Nascent Atomic Hydrogen. The Arsenic Trimerizes the Hydrogen to H^3 , frees the Tri Hydrogen, itself is then nascent poison to Bronze the Victim to a Cyanotic Hiroshima Arsenic Bronze Mask. The Arsenic Fusion is to triple it's own atomic weight, to the weight and propertys of Radium, enhanced by the presence of Barium and the vaporized Arsenic Ionizes the Air to A Fire Ball of Gas.”

5. The patent application contained twenty claims, of which the most comprehensive are Claims 1 and 9, as follows:

"1. The invention of the new useful Amino Arseno Cyanide Bomb, Explosive or Fuel made from the interaction and detonation, or burning of the following ingredients, or the generation of the said ingredients, or the equivalent thereof, said ingredients being Ammonium Nitrate, Hydro Cyanic Acid, or the equivalent of Hydro cyanic Acid-Cyanogen, or Cyanogen and Hydrogen, Arsenic, Metallic, Oxide, or Arsenical being included as Arsenic, and Platinum or Palladium Black or the equivalent Catalyst, such as Platinum and Palladium or Platinum Metals Catalysts such as Platinum Rhodium, or other Catalyst, said aforementioned ingredients may be detonated together, or they may be detonated in series, or some of the ingredients may be omitted, or other ingredients may be added without departure from the scope of this invention claim.

"9. The Arsenic Bomb Wherein the Vaporized Arsenic of the Bomb has the Power to Ionize the Atmosphere, said Bomb Being Made from Arsenic and Nascent Hydrogen, such as is given off by An Acid, a Metal, and an arsenical, said formed Arsine Being detonated, the Vaporized Arsenic Converting the Ingredients of the Air to An Atomic Power Fire Ball, or Electrical Flash of the Air, and a White Mushroom Cloud of the Oxidized Arsenic Forming, with a beautiful Lavender underlay, of the Vaporized Arsenic Oxidizing, and a fall out of deadly Atomic Arsenic, or Arsenical, usually quickly fatal to the victim, said nascent Hydrogen may be formed in any other way."

6. The application for patent was examined by the Patent Office and rejected on a number of grounds, many of them formal but also the substantial ground that the claims were "rejected as based on a vague and indefinite disclosure", and further rejected "for containing subject mat-

ter barred by the Atomic Energy Act of 1954 as stated in 42 U.S.C. 2181 (sec. 151)." Applicant has testified that he abandoned the application after this action.

7. In support of its Motion to Dismiss, the Office of the General Counsel filed the affidavit of Commander Watters, who is a thoroughly qualified Doctor of Philosophy in the field of nuclear physics and the application of atomic physics to weapons and weapon instrumentation, who states his conclusion in this passage of Paragraph 7 of his affidavit:

"7. I have carefully read the petition and the patent application No. 632,001 submitted by Dr. Cornell Joel Grossman of Millburn, New Jersey. Based on my knowledge of the U. S. and overseas atomic energy research and programmatic work, and of the U. S. nuclear weapons program, it is my considered opinion that Dr. Grossman's application contains:

"(a) No disclosure useful in the production of or utilization of special nuclear material or of atomic or nuclear energy.

"(b) No disclosure of any nuclear reactions nor of any atomic reactions not comprehensively treated in numerous elementary chemistry textbooks."

8. Dr. Watters also stated in his affidavit that to the best of his knowledge and belief "the alleged disclosure in Dr. Grossman's application has never been used in the atomic or nuclear weapons program" of the Atomic Energy Commission.

9. Upon the hearings, Dr. Grossman testified in his own behalf at considerable length, and although much of the testimony was rather discursive and a substantial part of it unrelated to the substance of the application, the position of Applicant is pretty well set forth in the following passages from the testimony:

(CHAIRMAN OOMS)

"I was going to ask you first what relation, if any, does the subject matter of the patent application, upon which your current application here is based, differ

from the disclosures on which your previous cases here were based?

"Dr. GROSSMAN: Really no different, no real difference. It is the same general—there is no new invention involved. I merely thought if you would not give it in the atomic field, I would try to patent it and sell it commercially. I approached large explosives manufacturers to sell it to them as a patent." (Tr. p. 4.)

"Chairman OOMS: Let us go to your present disclosure which forms the basis—

"Dr. GROSSMAN: It is still the same, almost the same.

"Chairman OOMS: Was that not before us at the last hearing?

"Dr. GROSSMAN: Yes, sir.

"Chairman OOMS: And that is substantially the same?

"Dr. GROSSMAN: Substantially the same except that I brought with me a little platinum foil. If we take that platinum foil and we pass it through, the test for platinum is to heat up to several thousand degrees, take it out and it does not change color. It takes about three thousand degrees Fahrenheit to melt it. If I take the smallest amount of arsenic and put it on that, it melts it at a couple of hundred degrees like butter. In other words, I put the arsenic with it to show an atomic power. That atomic power—this is theory now—is probably due to the fact that the platinum and palladium, either one alone, takes up nine hundred volumes of hydrogen insoluble. That it takes up a volume of oxygen on the surface and that there is an interchange between the hydrogen and the oxygen that gives you the terrific power and that arsenic, according to the Britannica ionizes the atmosphere.

" . . .

"If you look at the atomic chart, you will see hydrogen 1, carbon 12, nitrogen 14 and the hydrogen is the plus added and the hydrogen is the minus added.

"When I was taught military chemistry and atomic chemistry in 1918, I was taught the theory of Dimitri

Mendelay, medical chemical advisor to the Czar of Russia, who predicted if you can get eight different kinds of hydrogen together, you will have an atomic bomb. He gave us that chart of the cycle, like cords. If you take my nitrogen and my arsenic, they are in the same category, nitrogen, phosphorous, arsenic in that vertical group.

"My nitrogen and arsenic seemed to act like the most powerful explosive known in 1911. Nitrogen trichloride. It is my cyanogen substituting for the chlorine as an alergen." (Tr., pp. 13-14-A.)

"Chairman Ooms: No, let us stay with what happened since you were here last year, two years ago.

"Dr. GROSSMAN: * * * Now, in the chemicals used in my bomb, you have platinum and I used a thermit with barium, barium peroxide, to get the high heat.

"Now, the first discovery of atomic or nuclear energy was made with the chemicals of my formula, not on my invention but by Wilhelm Konrad Roentgen. He had a scheme of platinum, barium dried. He had an electrical tube on a rack that a current was going through and he noticed that a key on one side would glow, that he could hold his book up there and he could see the key through the book. In other words, the platinum barium cyanide is the intensifying stream. They form a part of my patent, rather my formula, in that they intensified the action. The platinum catalyst, I have described to you the hydrogen oxygen power of it, and the barium poison and the cyanide poison. Barium is the deadliest poison known. It used to be called plutonium. When I studied chemistry they called it plutonium; the new name is barium.

"* * *

"Dr. GROSSMAN: Barium and plutonium of my time were identical. We were told that the name was plutonium and for the chemist ahead of my time that the name had been changed to barium because of its deadly like powers of poisons. All the soluble bariums are poisonous. The only one that isn't is barium sulfate and its test is its insolubility." (Tr., pp. 22-23.)

"Chairman Ooms: Dr. Watters is here and is prepared to answer any questions that are relevant to your application and the material that you have disclosed to the Commission upon which you based application.

"Dr. GROSSMAN: May I ask Captain Watters if this is given off in the stars, the hydrocyanic?

"That has been identified, chemically with spectroscopy. Wouldn't you say the big stars give off atomic energy?

"Commander WATTERS: In your terminology I think you are probably right, but your use of atomic energy refers to an atomic type reaction where it has to do with an electron reorientation and not a nuclear origin which is our basis for the description of atomic or nuclear energy.

"I think in your terminology, yes, it is true, but in terminology of atomic energy as we know it, the energy released from nuclear fission or nuclear fusion then I doubt this is so except in certain nebula where there are known to be certain thermal reactions." (Tr., pp. 31-32.)

"Chairman Ooms: Doctor, would you return to your questioning of Dr. Watters so that we may conclude with him and excuse him.

"Dr. GROSSMAN: I am trying to convince Dr. Watters that this is within the scope of your domain. I only mention this to show Dr. Watters, the magic numbers, the 91, 92 of the zirconium—you go through the whole thing, the arsenic, the arsene becomes 78. Three cyanogens becomes 78. You take three arsene hydrogens off and you have 235. You make these things in the bomb, without knowing you did it. This is all theory.

"I would not bring up any theory except to try to convince you. The theory means nothing. I beg you to try and I will await your reply. Make the test.

"Chairman Ooms: Do you have any more questions of Dr. Watters?

"Dr. GROSSMAN: I don't think so. He wants to go.

"Chairman Ooms: I would like to ask him a couple of questions while he is here.

"Dr. Watters, you have read this file, as I understand it from your affidavit, and are familiar with its application and its contents. Are any of the phenomena which are expressed in that disclosure of a nuclear character as we understand that terminology in the Atomic Energy Act of 1946 and 1954?

"Commander WATTERS: No, they are not; they are not at all.

"Chairman Ooms: For the purposes of understanding this legislation and considering documents such as this disclosure of Dr. Grossman, is there a line of definition that we can draw between the chemical phenomena of explosives and the so-called explosions of atomic energy or nuclear phenomena?

"Commander WATTERS: Yes, I think all of his references to purely extra nuclear functions of the atom, in other words, not nuclear, not atomic energy as we define it, but atomic energy only in being a chemical sort of reaction.

"Chairman Ooms: In other words, long before we had a practical science of nuclear technology, we had a chemical science which was pretty well understood, but naturally involved the use of the term "atom" and the phenomena of what were considered atomic phenomena which were actually of a chemical as distinguished from a nuclear character?

"Commander WATTERS: Yes, even before we knew anything about nuclear energy, before we knew there was such a thing this was an established science.

"Chairman Ooms: Those phenomena, as I understand it, can be roughly defined and for practical purposes the definition will stand where you have what is in chemistry a molecular rearrangement of atoms, whereas, in the science of nuclear technology, you actually have a destruction or modification of the atomic structure itself; is that correct?

"Perhaps I do not use the terminology accurately. How would you distinguish between what we ordinarily

consider what you call extra nuclear phenomenon from the nuclear phenomenon?

"Commander WATTERS: I think this is the best way to define it. It is an extra nuclear reaction. It does not involve any change in the structure of the nucleus. Now, it does not have to be molecular. For example, you can have atomic hydrogen in hydrogen blow torches available. All this means is, instead of getting H^2 hydrogen, you get H^1 hydrogen. You get a little more heat. This is still an extra nuclear sort of chemical reaction having nothing to do with any nuclear transmutation at all." (Tr. pp. 42-45.)

10. It is evident from the passages quoted from the patent application of Applicant and his own testimony, as well as the statement by Commander Watters, that the application is based upon the misapprehension of Applicant that the award provisions of the Atomic Energy Act of 1954 embrace phenomena other than those relating to nuclear activity. As Commander Watters pointed out during the hearing, this misapprehension arises from a basic difficulty in the language in that we speak of atomic power when "what we commonly call atomic power is not really atomic power; it is nuclear power". (Tr., pp. 17-18).

11. The disclosure of the Applicant relates entirely to chemical reactions and not to the nuclear reactions to which the Atomic Energy Act of 1954 is directed.

DETERMINATION

Applicant is not entitled to any award under the Atomic Energy Act of 1954.

STATEMENT OF REASONS

This application could be disposed of upon several grounds. First, the ground that all that is covered by this application was disposed of in the consideration of Docket No. 17. That case was disposed of in our opinion reported in 107 U.S.P.Q. 181 (1955), and on rehearing in 111 U.S.P.Q. 388 (1956). The determination was affirmed by the Court of Appeals for the District of Columbia in

Grossman v. United States, et al., 113 U.S.P.Q. 504 (1957), and review denied by the Supreme Court of the United States on January 6, 1958, 78 U.S. Sup. Ct. Rep. 340 (1958), and denial of a petition for rehearing 78 U.S. Sup. Ct. 427 (1958). The second ground upon which the case could be and is disposed of independently of any consideration that the defense of res adjudicata is the ground that the substance of the disclosure does not relate to the statutory subject matter committed to this Board, that is, "invention or discovery useful in the production or utilization of special nuclear material or atomic energy, * * *". (Sec. 157b(3)) We ignore the formal objections to the application, failure to report to the Atomic Energy Commission in time although that would form an independent ground of disposition, and the failure to comply with the Regulations in drafting the application for an award.

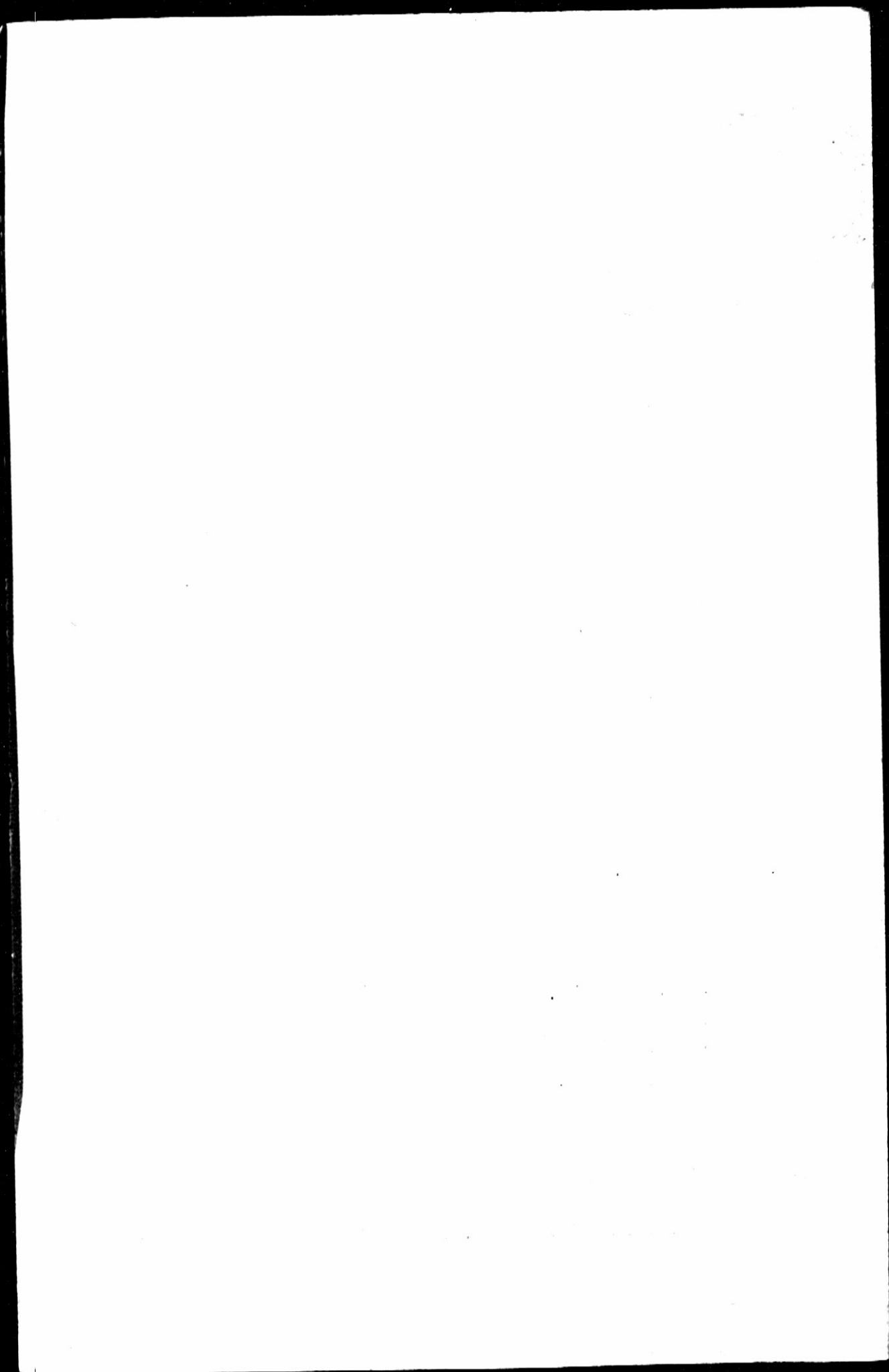
We have considered this case entirely upon the substance of the disclosure which Applicant has submitted, and our determination is based upon the failure of the subject matter of that disclosure either to disclose anything that relates to the subject matter upon which we can grant an award, and also to the entire lack of proof of any value in the disclosure whatsoever.

It is the opinion of the Board that Applicant's difficulty in this case arises from his misapprehension of the limited nature of the terminology employed in the Atomic Energy Act, and his refusal to recognize that chemical phenomena which do involve atomic actions of different type are not the nuclear action to which the Atomic Energy Act is addressed.

/s/ CASPER W. OOMS,
Chairman,
/s/ JOHN V. L. HOGAN,
Member.
/s/ LAWRENCE C. KINGSLAND,
Member.

Germantown, Md.

Dated: September 30, 1960.



In the
UNITED STATES COURT OF APPEALS

for the
DISTRICT OF COLUMBIA CIRCUIT

in
WASHINGTON, D.C.

*United States Court of Appeals
For the
District of Columbia Circuit*

FILED NOV 22 1960

Joseph W. Stewart
CLERK

No. 16080

November 18, 1960
September term
of 1960

Cornell Joel Grossman, D.D.S.,
Petitioner,

v

The United States Atomic Energy Commission, and the Gov-
ernment of the United States,

Respondent,

PETITION FOR REVIEW

OF AN ORDER OF THE UNITED STATES ATOMIC ENERGY COMMISSION
WHICH REFUSES TO TEST OR GRANT COMPENSATION FOR THE PETI-
TIONER'S ORIGINAL HYDROGEN ATOMIC BOMB FORMULA, GIVEN TO
THE UNITED STATES.

To the Honorable, the United States Court of Appeals, for
the District of Columbia Circuit, and to the judges thereof.

2.

Petitioner, Cornell Joel Grossman, being aggrieved at the order of the United States Atomic Energy Commission, does herein pray that this Court order the Atomic Energy Commission of the United States to reconsider his application for just compensation.

Petitioner is the inventor who first gave the atomic Hydrogen bomb formula to the United States Government.

The United States Atomic Energy Commission has refused to compensate the petitioner as provided by law.

The Commission refused to make a detonation from this inventor's formula.

This detonation would have shown the inventor's formula to be identical with the other atomic detonations of the United States Government.

The refusal of the Commission to, and its attitude toward, the inventor was arbitrary, capricious and indiscreet.

The Atomic Energy Acts of 1946 and 1954 place this appeal in this Court. This is in Public Law 585, 79th Congress, Chapter 724, - 2nd Session, S.1717, and in Section 11, item 4. It is in the Atomic Energy Act of 1954, section 151.

3.

The Commission order is attached to this petition. The Order states: "it does not relate to an invention or discovery useful in the production or utilization of special nuclear material or atomic energy" and the same is hereby denied.

A test detonation of the formulary in Docket #28 of the United States Atomic Energy Commission would be of such magnitude from a handful of the ingredients as to classify it from the so called atomic energy or utilization of nuclear material.

Said term nuclear power is conceded in the docket to denote explosions of certain great magnitude.

All text books point out that no one has ever seen or isolated a nucleus of an atom; and, that it is a fictitious term used for teaching purposes in theory only to try to explain atomic energy. In this respect atomic energy is akin to electricity. On the Washington Building the Government states that we do not know what electricity is.

Therefore, the order is in great error and highly detrimental to all the people of the United States.

4.

In the best interests of the people of the United States, petitioner prays that this Court refer Docket #28 back to the United States Atomic Energy Commission for test, recognition and compensation of the appellant, the inventor.

Very respectfully yours,

Cornell Joel Grossman,
D.D.S.

Cornell Joel Grossman, D.D.S.,
46 Old Short Hills Road,
Millburn, New Jersey.

Telephones: Drexel 6 - 0006
Drexel 6 - 0808

5.

PROOF OF SERVICE

I, Cornell Joel Grossman, of Millburn, New Jersey, appellant herein, hereby certifies that on November 21st, 1960, I served copies of the foregoing Petition for Review, by registered mail, addressed to: Secretary Woodford B. McCool, United States Atomic Energy Commission, Washington, D.C.

Cornell Joel Grossman S.S.S.
Cornell Joel Grossman, D.D.S.
46 Old Short Hills Road,
Millburn, New Jersey.

W. E. Kolodkin

NOTARY PUBLIC OF NEW JERSEY

MY COMMISSION EXPIRES ~~NOTARY PUBLIC OF N.J.~~
~~Commission Expires Sept. 14, 1963~~ 1963

UNITED STATES OF AMERICA
ATOMIC ENERGY COMMISSION

IN THE MATTER OF }
APPLICATION OF }
CORNELL JOEL GROSSMAN }

Docket No.28.

O R D E R

At a session of the Atomic Energy Commission held at Germantown, Maryland, on the 2nd day of November, 1960, Commissioners John S.Graham, Robert E.Wilson, and L.K.Olson, present, it appearing that:

1. The petitioner filed with the Commission on October 12, 1960, a petition for review of the decision of the Patent Compensation Board dated September 30, 1960, denying his application for an award under Section 157 b.(3) of the Atomic Energy Act of 1954, as amended, for an alleged invention in an atomic explosive.

2. The petitioner has not been adversely affected or aggrieved by the decision of the Patent Compensation Board, and review there of is not required in the public interest under applicable statutes and regulations, including 10 C.F.R. § 80.61.

3. The claim of the petitioner for an award does not fall within the jurisdiction of the Patent Compensation Board or of the Commission under Section 157 b.

(3) of the Atomic Energy Act of 1954, as amended, for the reason that it does not relate to an invention or discovery useful in the production or utilization of special nuclear material or atomic energy, it is hereby

ORDERED that the petition for review of the decision of the Patent Compensation Board dated September 30, 1960, be, and the same hereby is, denied.

UNITED STATES ATOMIC ENERGY COMMISSION

by Woodford B. McCool (signed.)
Secretary.

SRAL

dated: November 2, 1960